



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Police Officer Dallas Chiles : ORDER
Tax Registry No. 950202 : OF
Applicant Processing Division : DISMISSAL
-----X

Police Officer Dallas Chiles, Tax Registry No. 950202, Shield No. 14765, Social Security No. ending in [REDACTED], having been served with written notice, has been tried on written Charges and Specifications numbered 2014-12161, as set forth on form P.D. 468-121, dated July 30, 2014, and after a review of the entire record, has been found Guilty as charged of Specification Nos. 1 & 2.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Dallas Chiles from the Police Service of the City of New York.


WILLIAM J. BRATTON
POLICE COMMISSIONER

EFFECTIVE: 0001 hrs. 7/30/15



POLICE DEPARTMENT

July 16, 2015

-----X
In the Matter of the Charges and Specifications : Case No.
- against - : 2014-12161
Police Officer Dallas Chiles :
Tax Registry No. 950202 :
Applicant Processing Division :
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Rosemarie Maldonado
Deputy Commissioner Trials

APPEARANCE:

For the Department:

Joshua Kleiman, Esq.
Penny Bluford-Garrett, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent:

Roger Blank, Esq.
373 Park Avenue South - 6th Floor
New York, New York 10016

To:

HONORABLE WILLIAM J. BRATTON
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

Website: <http://nyc.gov/nypd>

The above-named member of the Department appeared before me on January 21, April 8 and May 15, 2015, charged with the following:

1. Said Police Officer Dallas Chiles, on or about and between January 16, 2014, and July 16, 2014, did engage in conduct prejudicial to the order, efficiency or discipline of the Department in that said Police Officer Chiles wrongfully did ingest marijuana without police necessity or authority to do so.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Police Officer Dallas Chiles, on or about and between January 16, 2014, and July 16, 2014, did engage in conduct prejudicial to the order, efficiency or discipline of the Department in that said Police Officer Chiles wrongfully did possess marijuana without police necessity or authority to do so.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

The Department was represented by Joshua Kleiman, Esq., and Penny Bluford-Garrett, Esq., Department Advocate's Office, and Respondent was represented by Roger S. Blank, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Detective Sayedul Rahman, Dr. Thomas Cairns, Lieutenant Joseph Gallo, and Sergeant Michael Reese as witnesses. Respondent called Janique Cambridge as a witness and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After evaluating the testimony and evidence presented at the hearing, this tribunal finds Respondent guilty of the subject charges.

SUMMARY OF EVIDENCE PRESENTED

Background

The following facts are undisputed. Respondent was randomly screened for drugs on July 16, 2014. Detective Sayedul Rahman at the Medical Division collected three hair samples from Respondent's leg, and sent two to Psychemedics Corporation (Psychemedics), a drug testing laboratory in California. As per Department policy, the third sample was stored at the Medical Division so that, in the event that the first two samples tested positive, Respondent could send the third sample to a lab of his choosing for independent testing. Psychemedics notified the Department that Respondent's hair samples tested positive for marijuana. On or about January 8, 2015, Respondent sent his third hair sample to Quest Diagnostics (Quest), a drug testing laboratory in Kansas. The third sample also came back positive for marijuana.

a. The Hair Sample Collection

The Department presented the following evidence. Detective Rahman is a registered nurse who was trained in the proper procedures for collecting hair samples to be used in drug testing. He worked in the Drug Screening Unit from 2005 to 2010 and then again from July to November 2014. On July 16, 2014, at 1455 hours, Respondent was notified that he was subject to a random drug test. At 1607 hours, Respondent signed in at the Medical Division and filled out a Drug Screening Questionnaire on which he indicated that he had not taken any prescription medication in the last three months. Respondent also completed two custody and control forms for the hair samples, on which

Respondent was identified by donor identification number 20-2658-14-XH. (Tr. 24-25, 27-28, 37-40; Dept. Exs. 1A-1D)

Detective Rahman remembered meeting Respondent and having a brief discussion about the uniqueness of his first name, but he did not have a specific recollection of collecting Respondent's samples. According to Detective Rahman, he adheres to standard procedures when collecting hair samples. These procedures include wiping down the table with a mixture of water and isopropyl alcohol and then covering it with wax medical paper prior to each collection. In this case, he shaved Respondent's leg hair onto wax paper. Detective Rahman explained that hair is taken from the legs when the donor's head hair is not long enough for a suitable testing sample. In Respondent's presence, and with gloved hands according to procedure, Detective Rahman separated Respondent's hair into three equal samples and placed each sample into its own hair collection kit. Each of the three kits included an interior envelope and an exterior plastic envelope which were initialed by Respondent and sealed with security tape. The custody and control form signed by Respondent certified that the sealed samples were his, that the hair was cut close to the skin, and that he "witnessed the sample collector seal the sample in the envelope." (Tr. 26, 40-43, 62; Dep. Ex. 1D)

Documentation from the Medical Division verifies that Detective Rahman placed Respondent's samples in a safe within the Drug Screening Unit for temporary storage at 1708 hours. At approximately 2215 hours, Detective Rahman removed a group of samples, including Respondent's, and transferred them to the Sick Desk for storage. The next day, two of Respondent's samples were sent to Psychomedics for testing via Federal

Express. Respondent's third sample remained stored in the designated third sample locker at the Sick Desk. (Tr. 45-46, 54, 163; Dept. Exs. 1E-1I)

b. The Psychomedics Results of NYPD Hair Samples

Dr. Thomas Cairns is the senior scientific advisor and deputy lab director at Psychomedics. Psychomedics has been certified by the Food and Drug Administration (FDA) and is licensed by the New York State Department of Health in forensic toxicology. Based on the qualifications cited in his curriculum vitae, Dr. Cairns was deemed an expert in the field. (Dept. Exs. 2A-2D)

Dr. Cairns explained that marijuana is a mixture of cannabinoid compounds, which, when ingested into the body, enters the bloodstream. As cannabinoid compounds pass through the liver, enzymes convert the active ingredient in marijuana, tetrahydrocannabinol (THC), into the metabolite carboxy tetrahydrocannabinol (Carboxy THC). This metabolite is only produced by the liver after ingestion of marijuana. As Carboxy THC-contaminated blood circulates through the bloodstream and enters the base of a strand of hair, the metabolite becomes trapped inside the hair structure. A 2.4 centimeter hair sample taken from a leg records the presence of Carboxy THC in the bloodstream throughout its growth cycle – a period of approximately six to seven months. (Tr. 78-80, 96)

Dr. Cairns testified that the first test that Psychomedics conducts on a sample is an enzyme immunoassay (EIA). If this analysis finds a presence of cannabinoids at a concentration at or above a level of 10 picograms per 10 milligrams of hair (10pg/10mg),

it is considered presumptive positive. In presumptive positive cases, another portion of the same sample is washed to remove external contamination and tested using gas chromatography mass spectrometry mass spectrometry (GC/MS/MS). If GC/MS/MS analysis finds a presence of Carboxy THC at or above the administrative cutoff level of 1pg/10mg, the lab will test the second hair sample for confirmation. Dr. Cairns explained that the administrative cutoff level is established by Psychemedics, cleared by the FDA and adopted by the NYPD. It is used to clearly differentiate an active drug user from someone who has been subjected to infrequent or passive marijuana exposure. Only in cases where both the first and second hair samples test positive for Carboxy THC at or above the administrative cutoff does Psychemedics report a positive finding to the Department. (Tr. 80-83, 97, 107)

At trial, Dr. Cairns reviewed the laboratory data package produced by Psychemedics for the samples collected from Respondent on July 16, 2014. The package, in which Respondent was identified by his donor identification number, showed that the chain of custody remained intact. Respondent's first sample came back from the GC/MS/MS analysis indicating the presence of Carboxy THC at a level of 1.3pg/10mg. Respondent's second sample confirmed the presence of Carboxy THC at a level of 1.4pg/10mg. Both samples tested positive at a level above the administrative cutoff, indicating ingestion of marijuana on "multiple occasions during the six to seven month period preceding the collection day." Dr. Cairns characterized the difference between the two samples as scientifically "insignificant." (Tr. 92, 95-98; Dept. Ex. 3)

c. The Quest Results of Respondent's Third NYPD Hair Sample

Sergeant Michael Reese, a supervisor in the Drug Screening Unit, testified that he was notified on July 28, 2014, that Respondent's first two samples tested positive for Carboxy THC. On July 29, 2014, in compliance with Department protocol, Respondent's third sample was taken out of the third sample locker and moved to a safe in the administrative office of the Medical Division. On January 8, 2015, Respondent went to the Medical Division, where, in the presence of Sergeant Reese and Lieutenant Michael Romano, Integrity Control Officer for the Medical Division, he inspected the third sample's packaging and prepared the paperwork for shipment to Quest, the independent lab of his choice. Sergeant Reese admitted that as they were transporting the repackaged sample from the Drug Screening Unit to the Sick Desk, he realized that he had failed to sign a section of the chain of custody form. As a result, all three men returned to the Drug Screening area where Sergeant Reese voided the incomplete packaging forms and, in Respondent's presence, filled out new packaging forms. The sample was secured in a storage cabinet at the Sick Desk until it was shipped. (Tr. 161-162, 164, 166-169, 183-187, 189-192, 195, 197-198; Dept. Exs. 5A-12)

According to a Quest laboratory Data Package, dated January 28, 2015, the GC/MS/MS analysis conducted on Respondent's third sample confirmed the presence of the metabolite Carboxy THC present at the level of 1pg/10mg. (Dept. Exs. 13, 14)

d. Respondent's Character

Respondent testified that he has never knowingly consumed marijuana. He explained that his mother had a substance abuse problem which caused him to not "want anything to do with [drugs]." During his official Department interview, Respondent

denied ever smoking marijuana or being in the presence of anybody smoking marijuana, although he has smelled it while on patrol. (Tr. 319; Dept. Ex. 17)

Respondent's girlfriend, Janique Cambridge, testified that she did not believe the allegations against Respondent. She has known Respondent since 2006 and has been dating him since January 2014. She has never smelled marijuana on his clothing or in his apartment and has never observed him under the influence of marijuana. She further testified that Respondent "loves his job" and "wouldn't do anything to jeopardize his plans for his life with the Department." (Tr. 231, 239-241)

FINDINGS AND ANALYSIS

Respondent is charged with possessing and ingesting marijuana without police necessity or authority after a random drug test revealed the presence of marijuana in the hair samples collected by the Department. After evaluating the testimony and evidence presented at the hearing, and assessing the credibility of witnesses, this tribunal finds that the preponderance of the credible evidence established that Respondent is guilty of the charged misconduct.

The Department adequately proved the integrity of the sample collection process, that the chain of custody was not compromised and that Respondent's samples were accurately tested using a New York State licensed and FDA cleared laboratory. The evidence further established through Dr. Cairns' credible testimony and other evidence, that Respondent's hair samples contained Carboxy THC at a concentration above the administrative cutoff level. Respondent's third sample, which was tested by an

independent lab of his choice, also presented evidence of the presence of Carboxy THC – although at a somewhat lower level.

Respondent argued that the Psychemedics test results represent false positives and that the reported levels of Carboxy THC, 1.3pg and 1.4pg respectively, were too close to the 1pg cutoff to be deemed reliable. This unsubstantiated argument, however, was convincingly debunked by Dr. Cairns. At trial he testified that the cutoff “is a concentration level supported by clinical analysis...that clearly distinguishes a user from someone who was one time or passively exposed with a wide degree of conservatism.” Dr. Cairns further explained that the purpose of the administrative cutoff level is to weed out actual marijuana users from people who may have experienced occasional, passive or accidental inhalation or ingestion. He estimates that to get to the cutoff, an individual would have to smoke “one joint every other week during the hair timeline period, which in this case is six, seven months.” In sum, the administrative cutoff is set high enough to ensure that a positive test result is recorded only for those that have ingested marijuana multiple times during the look back period. It follows that Respondent’s 1.3pg and 1.4pg test results, while only 0.3pg and 0.4pg above the cutoff respectively, rule out passive, accidental or casual exposure. Accordingly, the Court rejects Respondent’s arguments and finds that the Psychemedics test results were reliable. (Tr. 97, 128)

In the alternative, Respondent argued that the positive test results reflect his unknowing ingestion of hemp seeds in smoothies his girlfriend prepared for him over a period of approximately six months. Cambridge testified that in January 2014 she began following a diet prescribed by a book entitled, “The Daniel Plan.” As part of the diet she

prepared smoothies consisting of various ingredients, including hemp seeds. Cambridge used approximately two tablespoons of hemp seeds when making a batch of smoothies that produced approximately two 16 to 20 ounce servings. Although an estimate, Cambridge testified that she gave Respondent one smoothie serving approximately three times per week from January to July 2014. (Tr. 232-233, 237, 249; Dept. Ex. 15; Resp. Exs. A, B)

In support of his theory, Respondent referred to a news article describing an Air Force regulation which bans military personnel from consuming Chobani yogurt containing hemp seeds. The article points to Air Force regulation AFI 44-120, paragraph 1.1.5, which states that “studies have shown that products made with hemp seed and hemp seed oil may contain varying levels of tetrahydrocannabinol (THC), an active ingredient of marijuana which is detectable under the Air Force Drug Testing Program.” (Resp. Ex. C)

According to Dr. Cairns, however, it is “totally unrealistic that eating [hemp] seeds even with trace levels of THC” will cause a positive test result anywhere near the cutoff of 1pg/10mg. Dr. Cairns explained that the casing of seeds that are not properly hulled may contain trace levels of THC. However, the FDA and DEA monitor “the food production of seeds to ensure that THC is eliminated and that the seeds have been prepared properly.” In support of his position, Dr. Cairns referred to a peer reviewed study conducted by researcher Dr. Mahmoud ElSohly in which fifteen volunteers consumed 300 grams of THC-contaminated hemp seed for ten days.¹ The volunteers’

¹ Mahmoud A. ElSohly et al., *Evaluating the Impact of Hemp Food Consumption on Workplace Drug Tests*, 25 J. Anal. Toxicol. 691 (2001).

urine was then analyzed for the presence of Carboxy THC. None of the volunteers in that study returned results at or above the administrative cutoff of 1 pg/10mg. Dr. Cairns explained that the 300 grams of hemp seeds consumed by the volunteers in the ElSohly study is equivalent to approximately forty tablespoons of hemp seeds per day. Respondent claimed he consumed smoothies prepared by Cambridge three to five times a week for a six month period. Cambridge testified that the smoothies contained approximately two tablespoons of hemp seed per batch. Two tablespoons is equivalent to 15 grams, but in actuality Respondent is likely to have consumed even less than that amount because he was only drinking about half a batch. Dr. Cairns' expert opinion is that, even if Respondent had consumed contaminated seeds, which is unlikely, the amount allegedly consumed was simply too low to have caused a result above the administrative cutoff level.² (Tr. 99-101, 125-126, 134, 316; Dep. Ex. 4)

While I do not doubt the sincerity of Cambridge's testimony that she prepared smoothies containing hemp seeds for Respondent, the scientific evidence presented at trial supports a conclusion that the amount of hemp seeds used in the smoothies was unlikely to have caused Respondent to test above the administrative cutoff for the presence of Carboxy THC.

Accordingly, I find that the Department Advocate met its burden of proof as to the reliability of the Psychomedics results and those results stand.³ *See Matter of*

² Dr. Cairns also noted that although the ElSohly study utilized urinalysis, its results are applicable to hair analysis because ElSohly had quantified the dose levels of THC thereby allowing Dr. Cairns to "extrapolate what the dose level would be to the hair" in terms of the cutoff.

³ It should be noted that Respondent's attorney requested additional discovery from the Department Advocate on March 30, 2015 -- more than five months after their initial receipt of a discovery package including the Psychomedics Data Package and more than two months after the first day of trial. On April 20, 2015, Deputy Commissioner of Trials denied this late request for additional discovery.

McBride v. Kelly, 215 A.D.2d 161 (1st Dept. 1995) (substantial evidence that officer ingested cocaine was provided by mass spectrometry). Thus, Respondent is found guilty of the charged misconduct.

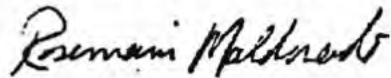
PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 6, 2011. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of possessing and ingesting marijuana without police necessity or authority. The Court acknowledges the submission of several character letters offered on Respondent's behalf, but notes that it is impossible for anyone to know what a colleague does behind closed doors after work. The Department has a strong interest in not employing persons who ingest and possess illegal drugs such as marijuana. Accordingly, the Court recommends that the Respondent be DISMISSED from the New York City Police Department. See *Disciplinary Case No. 85554/09*, signed January 5, 2011 (16-year member with no prior disciplinary record is dismissed from the Department for possessing and ingesting marijuana. Court rejected Respondent's argument that he may have used marijuana during alcohol-induced blackouts); *Disciplinary Case No. 81455/05*, signed August 3, 2007 (23-year member was terminated from the Department for possessing and ingesting marijuana); *Disciplinary Case No.*

2014-11720, signed April 2, 2015 (19-year member was terminated from the Department for possessing and ingesting marijuana).

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

JUL 30 2015

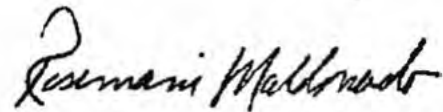
WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DALLAS CHILES
TAX REGISTRY NO. 950202
DISCIPLINARY CASE NO. 12161/2014

Respondent received an overall rating of 4.0 on his 2013 annual performance evaluation, and 3.5 and 3.0, respectively, on his two prior performance evaluations. He has been awarded one medal for Meritorious Police Duty. [REDACTED]
[REDACTED] He was suspended from duty from July 29, 2014 to March 10, 2015 as a result of the charges and specifications in this case. He has no prior formal disciplinary record.

For your consideration.



Rosemarie Maldonado
Deputy Commissioner Trials